IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

MACA.No. 650 of 2003()

AGAINST O.P.(MV)NO.1011/1998 OF MACT, KOLLAM)

APPELLANT/PETITIONER.

SASIDHARAN, S/O.KOCHUPAPPU,
KUNNEL VEETTIL, ALAPPADUMURI,
KARUNAGAPPALLY.

BY ADV. SRI.N.VIMALAN

RESPONDENTS:
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1. MOHANDAS, S/O.THULASIDAS,
MOHAN NIVAS, ALUMKADAVU P.O,
KARUNAGAPPALLY.

2. SANUKUMAR, CHERUMANNEL,
CHERIAZHEEKAL THURA, ALAPPADU VILLAGE,
KOLLAM DISTRICT.

3. THE MANAGER, ORIENTAL INSURANCE COMPANY
LIMITED, KOTTARAKKARA BRANCH, KOTTARAKKARA.

BY ADV. SRI.MATHEWS JACOB

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.A.C.A.No.650 of 2003

Dated this the 28th June, 2007.

J U D G M E N T

The claimant in O.P.(M.V.) No.1011/1998, on the file of the Motor Accidents Claims Tribunal, Kollam, is the appellant. This appeal is filed challenging the quantum of compensation awarded to the appellant. The appellant met with a motor vehicle accident on 26.3.1998, and sustained injuries. He filed a petition claiming compensation, impleading the owner, driver and Insurer of the offending vehicle. It was alleged that the accident occurred due to the rash or negligent driving of the motor cycle by the first respondent. The Tribunal found that the appellant, as well as the rider of the motor cycle were responsible for the accident, and the liability was fixed as 60:40. The Tribunal also found that the appellant is entitled to get a compensation of Rs.10,300/=. But on account of the fact that he was 60% liable to the accident, he was awarded only Rs.4120/=. The Insurer was directed to pay that amount. Challenging that quantum, this appeal is filed.

2. The Tribunal held that the appellant is 60% responsible for the accident. The road at the place of accident lies north south. The appellant was proceeding from south to north. So, normally he would have travelled through the western side of the road. The motor cycle must have come from the north. The accident occurred almost in the middle of the road.

3. The respondents have no case that the appellant went to the wrong side and hence accident occurred. On the other hand, the evidence adduced in this case show that a final report was filed against the rider of the motor cycle, alleging that he was riding the motor cycle in a rash or negligent manner. It is also pointed out that the driver appeared before the Magistrate, pleaded guilty and convicted. Therefore, I do not find any reason to hold that the appellant is 60% liable. According to me, he is only 25% liable, and the rider of the motor cycle is 75% responsible. Therefore, the liability will be apportioned as 75:25.

4. The wound certificate shows that the appellant sustained compound fracture on the right middle finger at metacarpo phalangeal joint. The Tribunal rejected that claim on the ground that

no such injury is noted in the discharge card. I have perused Ext.A7 discharge card. In Ext.A7, there is an entry to the fact that the compound fracture on the right middle finger and repair done. Patient was directed to report after three weeks for removing the Plaster of Paris. Therefore, I am of the view that an amount of Rs.5000/= ought to have been awarded for the injuries sustained.

In the result, this appeal is allowed in part. An award is passed allowing the appellant to recover an amount of Rs.3,605/= being the balance of 75% of the compensation already awarded, and Rs.5000/= more for the injuries sustained, thus totalling to an amount of Rs.8,605/=. The additional compensation awarded will carry interest at the rate of 6%, from the date of petition, till the date of realisation. The third respondent, Insurer, is directed to deposit the above amount in favour of the appellant. On deposit, the appellant can withdraw the amount.

K.PADMANABHAN NAIR,
JUDGE

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